



August 28, 2002

Mr. Brett Bray
Division Director
Motor Vehicle Division
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2002-4829

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167858.

The Texas Department of Transportation (the "TxDOT") received a request for information regarding AutoKam, Ltd., a former holder of a dealership license issued by TxDOT. You state that you are withholding Texas driver's license, dealer plate, and vehicle identification numbers appearing on application materials for a dealership license issued by the TxDOT from the responsive information pursuant to a previous determination issued by this office in Open Records Letter No. 01-4775 (2001). *See* Open Records Decision No. 673 (2001) (explaining when governmental body may withhold information pursuant to previous determination issued by attorney general). You also state that you are withholding social security numbers appearing on application materials for a dealership license issued by the TxDOT from the responsive information pursuant to another prior determination issued by this office in Open Records Letter No. 01-6050 (2001). You claim that some of the submitted information is excepted from disclosure under section 552.101 in conjunction with the doctrine of common-law privacy. You also state that some of the submitted information "could be considered copyrighted material." Finally, you state that the release of this information may implicate the proprietary interests of AutoKam, Ltd. Pursuant to section 552.305 of the Government Code, you state that you have notified AutoKam, Ltd. of this request for information and of its right to submit arguments to this office explaining why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Here, TxDOT has not submitted written comments explaining the applicability of its claimed exception.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Although the applicability of section 552.101 generally provides a compelling reason to overcome the presumption of openness, we find that none of the submitted information is protected by common-law privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (stating that information is protected by common-law privacy if it is highly intimate or embarrassing and of no legitimate public interest). Consequently, you may not withhold any of the submitted information under section 552.101.

We also note that under section 552.305(d), an interested third party has 10 business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, AutoKam, Ltd., has not submitted to this office reasons explaining why the submitted information should not be released. Therefore, we have no basis to conclude that the release of the submitted information would implicate the proprietary interests of AutoKam, Ltd. *See Gov't Code § 552.110(b)* (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note, however, that the submitted information contains bank account numbers that are excepted from release under section 552.136 of the Government Code. Section 552.136 provides as follows:

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile

identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, the TxDOT must withhold from disclosure the account numbers that we have marked pursuant to section 552.136 of the Government Code.

Finally, we consider your assertion that some of the submitted information consists of copyrighted materials. While we are unaware of copyrighted material contained within the submitted information, a custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, you must withhold the bank account numbers we have marked under section 552.136. You must release the remaining information subject to federal copyright law.

Finally, the TxDOT requests that this office grant a prior determination allowing it to withhold leases, telephone verification, ownership percentages, personal financial information, banking information, copies of checks, e-mail addresses, copyrighted information, copies of telephone book listings, and warranty deeds included in application materials for dealership licenses. We refuse your request at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

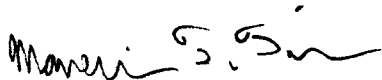
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 167858

Enc. Submitted documents

c: Mr. Allan G. Levine
Christian, Wukoson, Smith & Jewell
2302 Fannin, Suite 500
Houston, Texas 77002
(w/o enclosures)

Mr. David Shelburg
Autokam, Ltd.
7150 East Camelback Road, Suite 300
Scottsdale, Arizona 85251
(w/o enclosures)